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10/780,019	02/17/2004	Carol J. Miller		9590

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Michael R. McKenna  
Suite 3800  
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Chicago, IL 60661

EXAMINER

CONLEY, FREDRICK C

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/780,019

Applicant(s)

MILLER, CAROL J.

Examiner

FREDRICK C CONLEY

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15, 17 and 18 is/are rejected.
- 7) ☒ Claim(s) 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 10-11, 15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 1,275,205 to Bigham.

Claims 1 and 12, Bigham discloses a case for enclosing a pillow comprising a first pocket and a second pocket (4,5), each of said pockets having an opening defined by a rim at a proximal end and a closed section extending to an opposite end, the proximal end of the first pocket is independent of attachment to the second pocket and the opposite end of the first pocket extends from a portion of the rim of the second pocket (fig. 1-2),

whereby, a pillow can be inserted into one of the first pocket and the second pocket, and said one of the first pocket and the second pocket with the pillow disposed therein can be inserted into and covered by the other of the first pocket and the second pocket to enclose the pillow.

Claim 2, wherein the pillow is inserted into the second pocket 5, and the first pocket 4 is inherently capable of being turned inside out as the second pocket with the pillow disposed therein is inserted into and covered by the first pocket to enclose the pillow.

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Claim 3, wherein the pillow is inserted into the first pocket 5, and the first pocket with the pillow disposed therein is inserted into and covered by the second pocket 4 to enclose the pillow.

Claim 4, Bigham discloses a case for enclosing a pillow comprising a first pocket and a second pocket (4,5), each of said pockets having an opening defined by a rim at a proximal end and a closed section extending to an opposite end, the proximal end of the first pocket is independent of attachment to the second pocket and the opposite end of the first pocket being connected to a portion of the dm of the second pocket (fig. 1,2), whereby, a pillow can be inserted into one of the first pocket and the second pocket, and said one of the first pocket and the second pocket with the pillow disposed therein can be inserted into and covered by the other of the first pocket and the second pocket to enclose the pillow.

Claim 5, wherein the first pocket is a first pillowcase and the second pocket is a second pillowcase.

Claim 6, wherein the first pillowcase has a size that is not substantially different from that of the second pillowcase.

Claim 10, wherein the pillow is enclosed independent of a fastener.

Claim 11, Bigham discloses a case for enclosing a pillow comprising a first pocket and a second pocket (4,5), each of said pockets having an opening defined by a rim at a proximal end and a closed section extending to an opposite end, the proximal end of the first pocket is independent of attachment to the second pocket and the opposite end of the first pocket extends from a portion of the rim of the second pocket,

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wherein the pillow is enclosed independent of a zipper, whereby a pillow can be inserted into one of the first pocket and the second pocket, and said one of the first pocket and the second pocket with the pillow disposed therein can be inserted into and covered by the other of the first pocket and the second pocket to enclose the pillow.

Claim 15, Bigham discloses a method of encasing a pillow comprising the following steps:

inserting a pillow into an opening of one of a first pocket and a second pocket (4,5) of a case with each of said pockets having an opening defined by a rim at a proximal end and a closed section extending to an opposite end, where the proximal end of the first pocket is independent of attachment to the second pocket and the opposite end of the first pocket extends from a portion of the rim of the second pocket; and

covering said one of the first pocket and the second pocket with the pillow disposed therein with the other of the first pocket and the second pocket to enclose the pillow.

Claim 17, wherein inserting a pillow into an opening of one of a first pocket 5 and a second pocket 4 of a case includes inserting the pillow into the first pocket, and wherein covering said one of the first pocket and the second pocket with the pillow disposed therein with the other of the first pocket and the second pocket includes inserting the first pocket 5 with the pillow disposed therein into the second pocket 4 to enclose the pillow.

Claims 7-8 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 4,419,779 to Janesh.

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Claim 7, Janesh discloses a case for enclosing a pillow insert 26 comprising a sheet of material having a peripheral edge, said sheet measuring approximately three pillow insert lengths in length and two pillow insert widths wide for a first pillow length at a first end and one pillow width wide for each of a middle pillow length and a second end pillow length of said sheet, the first end 30 of the sheet being folded lengthwise forming a first double layer having a first bottom layer and a first top layer with a portion of the peripheral edge of the first top layer being attached to the first bottom layer forming a first pocket with an opening proximate the first end, and the second end pillow length 29 being folded widthwise and laid over the middle pillow length forming a second double layer comprising a second bottom layer and a second top layer and a portion of the peripheral edge of the second top layer attached to the second bottom layer forming a second pocket with an opening proximate the first pocket, whereby, a pillow insert can be inserted into one of the first pocket and the second pocket, and said one of the first pocket and the second pocket with the pillow insert disposed therein can be inserted into and covered by the other of the first pocket and the second pocket to enclose the pillow (fig. 5).

Claim 8, wherein the portion of the peripheral edge of the first top layer being attached to the first bottom layer is attached by stitching, and the portion of the peripheral edge of the second top layer being attached to the second bottom layer is attached by stitching (col. 2 line 50).

Claim 18, Janesh discloses a method of making a case for encasing a pillow 26 comprising the following steps:

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folding lengthwise a first end 30 of a sheet of material having a peripheral edge, said sheet measuring approximately three pillow lengths in length and two pillow widths wide for a first pillow length at a first end and one pillow width wide for each of a middle pillow length and a second end pillow length of said sheet to form a first double layer with a first bottom layer and a first top layer, attaching a portion of the peripheral edge of the first top layer to the first bottom layer to form a first pocket with an opening proximate the first end; folding widthwise the second end 29 pillow length laying it over the middle pillow length to form a second double layer comprising a second bottom layer and a second top layer; and attaching a portion of the peripheral edge of the second bottom layer to the second top layer to form a second pocket with an opening proximate the first pocket, whereby, the case for encasing a pillow allows a pillow to be inserted into one of the first pocket and the second pocket, and said one of the first pocket and the second pocket with the pillow disposed therein can be inserted into and covered by the other of the first pocket and the second pocket to enclose the pillow (col. 2 lines 50-53).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat.

No. 1,275,205 to Bigham

Claims 13-14, Bigham discloses all of the Applicant's claimed limitations except for visual characteristic of the first and second pockets being distinctly different. It is well known in the art to employ different visual characteristics on bedding and the Examiner takes Official Notice of the use of different visual characteristic on bedding and it would have been obvious to employ different visual characteristics in order to provide an alternative designed surface.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat.

No. 1,275,205 to Bigham in view of U.S. Pat. No. 6,196,156 to Denesuk.

Claim 9, Bigham discloses all of the Applicant's claimed limitations except for having a fabric impervious to dust mites. Denesuk discloses a fabric impervious to dust mites (col. 15 lines 5-10). It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a fabric impervious to dust mites as taught by Denesuk in order to inhibit the proliferation of dust mites in the cover of Bigham



***Allowable Subject Matter***

Claim 16 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to claims 1-7, 9-11, 15, and 17 have been considered but are moot in view of the new ground(s) of rejection.

With regards to the Affidavit under Rule 131, the creation of a prototype is not considered sufficient proof in order to show a reduction to practice the invention by the Applicant before the filing date of Benavides patent. The Applicant must provide evidence, such as documentation, that clearly sets forth the dates indicated by the Applicant.

Contrary to the Applicant's arguments, Janesh does disclose a case 23 for enclosing a pillow 26. The pillow 26 is sized so that it can be placed within the opening and under the folded portions of the case (col. 2 lines 33-35) thus the pillow is enclosed within the case as cited in the claim.

As clearly shown in figure 2, the case 10 is approximately three lengths from end 13 to an opposite end 11 shown in phantom. Furthermore, the first end 11 shown in figure 2 is folded over lengthwise the folded back upon itself to the opposite corner, thereby forming a double layer of material (col. 2 lines 16-21). The second end of the pillow case is inherently folded in a widthwise since it is folded back upon itself in order to define a triangular pocket. Since each of the ends are folded back upon themselves

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to form at least four overlapping triangular pockets the pillow 26 is inserted into one of the first and a second pocket and that such pillow stuffed pocket can be inserted into and covered by the overlapping second pocket.


***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C CONLEY whose telephone number is 571-272-7040. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HEATHER SHACKELFORD can be reached on 571-272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC

  
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